

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

SHAUN KENDRICK,	:	Case No. 3:09-cv-166
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
WARDEN, Lebanon Correctional Institution,	:	
	:	
Respondent.	:	

**AMENDED ORDER AND ENTRY: (1) ADOPTING THE REPORT AND  
RECOMMENDATIONS OF THE MAGISTRATE JUDGE (Doc. 32);  
(2) OVERRULING PETITIONER'S OBJECTIONS (Doc. 36); (3) DENYING  
PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT (Doc. 25); AND  
(4) DENYING ANY REQUESTED LEAVE TO APPEAL IN FORMA PAUPERIS  
OR CERTIFICATE OF APPEALABILITY**

This case is before the Court on Petitioner's Motion for Relief from Judgment. (Doc 25). On November 16, 2011, Magistrate Judge Michael R. Merz issued a Report and Recommendations recommending that Petitioner's Motion for Relief from Judgment should be denied and that Petitioner also be denied any requested leave to appeal *in forma pauperis* or a certificate of appealability.

After the Report and Recommendations were filed, Petitioner requested and was granted an extension up to and including December 23, 2011 to file objections. On January 5, 2012, almost two weeks after expiration of the extended objection period, no objections appeared on the Court's docket. Following a *de novo* review, and noting no objections to the Report and Recommendations, the Court signed an Order adopting the Report and Recommendations of the Magistrate Judge in its entirety and denying Petitioner's Motion. (Doc. 35).

After the Court's Order and Entry was docketed on January 6, 2012, the Clerk of Courts docketed Petitioner's Objections. (Doc. 36). A certificate of service appearing at

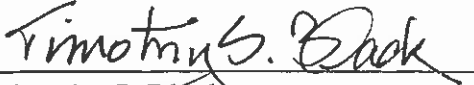
the end of Petitioner's Objections certifies that the Objections were placed in the mail over two weeks earlier, on December 21, 2011. Assuming the accuracy of Petitioner's Certificate of Service, the Objections are timely pursuant to the prisoner's mailbox rule. *Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008) (stating that "[u]nder this relaxed filing standard, a pro se prisoner's complaint is deemed filed when it is handed over to prison officials for mailing to the court") (citing *Richard v. Ray*, 290 F.3d 810 (6th Cir.2002) (per curiam) (extending *Houston v. Lack*, 487 U.S. 266 (1988))).

Nevertheless, in adopting the Report and Recommendations of the Magistrate Judge, the Court reviewed the case *de novo*, considered the arguments originally advanced by Petitioner and the findings of the Magistrate Judge. Based on review of the foregoing, the Court concluded that the Report and Recommendations of the Magistrate Judge should be adopted in full. (Doc. 35). Upon considering Petitioner's Objections, the Court's ultimate conclusion does not change.

Accordingly, as required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court reviewed Petitioner's Objections and the comprehensive findings of the Magistrate Judge. Based upon the reasoning and citations of authority set forth by the Magistrate Judge, the Court: (1) **ADOPTS** the Report and Recommendations (Doc. 32) in its entirety; (2) **OVERRULES** Petitioner's Objections (Doc. 36); (3) **DENIES** Petitioner's Motion for Relief (Doc. 25); and (4) **DENIES** any requested leave to appeal *in forma pauperis* or certificate of appealability.

**IT IS SO ORDERED.**

Date: 2/9/12

  
Timothy S. Black  
United States District Judge